



## DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

CEDB (715jj)

7 September 1993

MEMORANDUM FOR USACE COMMANDS, ATTN: SADBUs SPECIALIST/DEPUTY FOR  
SMALL BUSINESS

SUBJECT: SADBUs Policy Memorandum 93-2, Small Business and Small  
Disadvantaged Business Subcontracting Plan Administration

1. This policy memorandum establishes roles and responsibilities for administration of small business and small disadvantaged business subcontracting plans. The enclosed Construction Bulletin (CB) speaks to the Area and Resident Engineer staff in the field, and defines their role in subcontract plan administration. As the district's immediate contact with the contractor through contract administration, it is appropriate that they use the power of the contract to ensure subcontract plan compliance and reporting. I fully endorse the definition of roles and responsibilities in CB 93-19, and I adopt this strategy for the SADBUs program in all contracts. In contracts other than construction, where the Administrative Contracting Officer (ACO) is also the Procuring Contracting Officer (PCO), or another individual on the contracting officer's staff, the same principals of duty and responsibility apply.

2. The SADBUs Specialist (SADBUs) remains responsible for SADBUs program management and oversight at the district, lab or FOA, and must provide technical advice, instructions, guidance, and assistance to the PCO or the ACO. The SADBUs will participate in analysis of contractor's performance under the subcontract plan for interim and final appraisals, evaluation of the assessment of liquidated damages when damages may be appropriate, and prework conferences where time permits. I will continue to look to the SADBUs Specialist for timely and accurate upward reporting, for ensuring that contractors (or the ACOs for distribution to contractors) have the necessary subcontract reporting forms (SF 294/295, both sides, with instructions) and supplemental instructions, for ensuring that contractors receive copies of their approved subcontract plans and for reviewing modifications to subcontract plans (SF 30). The SADBUs Specialist must ensure that adequate controls are in place to (i) follow up on reports when due, (ii) obtain data corrections, (iii) keep CEDB, informed on problems which require a HQUSACE solution, (iv) share successes, (v) provide CEDB copies of approved subcontract plans, modifications, and other documents, and (vi) disseminate new or revised program policy or instructions, when issued by this office, to the ACO and PCO.

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3. The number of subcontract plans to be administered has grown over the past ten years because the contract mix has changed. This growth in the subcontract program demands that contracting officers (and ACOs) take a more active role where they have the power of contract enforcement behind them. The SADBUs Specialist remains in an assistance, management and oversight role. It is essential that the PCO, ACO and SADBUs cooperate and communicate to establish a team effort which executes USACE goals and objectives.

FOR THE COMMANDER:



Encl

DIANE S. SISSON  
Director  
Office of Small and Disadvantaged  
Business Utilization



US Army Corps  
of Engineers

# Construction Bulletin

No. 93-19 Issuing Office: CEMP-CP Issue Date: 8/26/93 Exp. Date: 31 DEC 95

## CEMP-C

Subject: Administration of the Small Business and Small  
Disadvantaged Business Subcontracting Plan

Applicability: DIRECTIVE

1. When a construction contract exceeding \$1 million is to be awarded to a large business, the successful offerer is required to submit a subcontracting plan prior to award. The plan is to be reviewed by the Small and Disadvantaged Business Utilization Specialist (SADBUS), and approved by the Contracting Officer. The elements of the subcontracting plan include goals for subcontract awards to small and small disadvantaged business (SB & SDB) concerns(\*), certain reporting requirements, flow down provisions for subcontracting, and other responsibilities which the contractor agrees to carry out. The approved subcontracting plan is incorporated into and made a material part of the contract. The subcontracting program flow down requirements apply to construction subcontracts exceeding \$1 million awarded to large businesses.

2. a. Reporting Requirements. The SF 294 "Subcontracting Report For Individual Contracts" is submitted by the contractor to the Contracting Officer or his representative twice a year. This form is the primary tool for monitoring contractor's compliance with the subcontracting plan and agency goal achievement for small and small disadvantaged businesses. The SF 294 is due 30 days following the end of the reporting periods (31 March and 30 September). The SF 295 "Summary Subcontract Report" contains information for all contracts that the contractor has with the U.S. Army Corps of Engineers. The SF 295 is submitted by the contractor to the Department of the Army with copies to DOD, HQUSACE (Office of the Small and Small Disadvantaged Business Utilization-CEDB) and the district on a quarterly basis. This report is due 30 days following the end of the reporting periods (31 December, 31 March, 30 June, and 30 September). Dollars awarded by the contractor/subcontractor (large business) to SB and SDB are reported on SF 294 and 295 during a specific reporting period. Percentages of awards to SB

(\*) FAR Part 19--Small Business and Small Disadvantaged Business Concerns, provides definition of these terms.

CEMP-CP

SUBJECT: Administration of the Small Business and Small Disadvantaged Business Subcontracting Plan

and SDB reported on the forms are based on total subcontracted amount (large and small businesses) during the same reporting period.

b. Liquidated Damages (LDs) - Small Business. When a contract includes the requirement for a subcontracting plan, the Federal Acquisition Regulation (FAR) requires that the FAR clause 52.219-16 "Liquidated Damages-Small Business Subcontracting Plan" be incorporated in the contract. The Liquidated Damages (LDs) are to be assessed when the contractor fails to make a good faith effort to comply with the subcontracting plan. The amount of damages attributable to the contractor's failure to comply is equal to the actual dollar amount by which the contractor failed to achieve each subcontract goal.

c. Superfund Program SDBs. Public Law (PL) 101-507 allows the Environmental Protection Agency to include women owned small businesses for the purpose of measuring the agency's achievement towards its 8 percent SDB goal. The PL applies to programs funded by EPA and administered by other Federal agencies as well. For this reason, women owned small businesses will be included by HQUSACE SADBU Office in the performance towards the SDB goal on the Superfund program.

### 3. RESPONSIBILITIES OF THE ADMINISTRATIVE CONTRACTING OFFICER (ACO).

a. The major responsibility of ACOs in administering contracts is to assure contractors' compliance with all contract requirements. This includes enforcing all contract requirements concerning SB and SDB utilization and recommending to the respective Contracting Officer the assessment of LDs when applicable.

b. When a contract includes provisions for a subcontracting plan, the responsible ACO must discuss with the contractor at the preconstruction conference the details of the plan and document these discussions in the preconstruction conference minutes. The district SADBUS shall be invited to the preconstruction conference to advise on subcontracting requirements and on SB and SDB opportunities. The ACO shall ensure that the individual identified by the contractor as the administrator of the subcontracting plan is also in attendance at the preconstruction conference. The SADBUS or the ACO shall provide the contractor with blank copies of the SF 294 and SF 295 with supplemental instructions and provide a schedule of reporting dates and the appropriate distribution of the required reports. The original completed SF 294 and a copy of the

CEMP-CP

SUBJECT: Administration of the Small Business and Small Disadvantaged Business Subcontracting Plan

completed SF 295 for each reporting period shall be provided by the contractor to the ACO. The ACO will forward the original SF 294 and a copy of the SF 295 which are submitted by the contractor to the SADBUS. Other issues to be covered include: what constitutes a "good faith effort", assessment of LDs and procedures to be followed in the implementation of the plan.

c. The ACO will perform a review of the SF 294 reports before they are submitted to the SADBUS. The ACO must assure that all subcontract awards made by the prime contractor to SB and SDB during any reporting period are reported on the SF 294. For Superfund contracts only, contractors are to report on SF 294 Item 16 "Remarks", total subcontracted amount to women owned small business during the reporting period. This requirement is unique to Superfund contracts. ACO's must work closely with the SADBUS to assure proper administration of the overall reporting process.

d. ACOs shall continuously monitor contractors' compliance with the subcontracting plan throughout contract performance. This is to include timely submittal of the required reports. Information reported on SF 294 may be an indication of how well the contractor is performing and can be used to determine if there is a need for improvement. Some tools which can be utilized during contract performance by the ACO to enforce compliance include withholding retainage and issuing interim unsatisfactory ratings. A telephone call from the District Commander or the Contracting Officer to the CEO of a company may be necessary to correct persistent problems in reporting or when there is evidence of the lack of a good faith effort on the contractor's part to meet the goals.

e. The ACO shall review all contract modifications over \$10,000 to validate subcontracting possibilities and enhance opportunities for SB and SDB, revise the subcontracting plan as required and reflect this revision on the SF 30, or recommend a separate acquisition for the added work when appropriate. The ACO shall coordinate this effort with the SADBUS and document the contract file.

f. The FAR states that failure to meet the goals in itself does not constitute a failure to make a good faith effort. In accordance with the FAR the following may be considered indications of failure to make a good faith effort and should be considered in the context of the contractor's total effort: failure to attempt to identify, contact, solicit, or consider for contract award SB or SDB concerns; failure to designate a company official to administer the subcontracting program; failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; and the adoption of company

CEMP-CP

SUBJECT: Administration of the Small Business and Small Disadvantaged Business Subcontracting Plan

policies or procedures which have as their objectives the frustration of the objectives of the plan. Failure to submit the reports may also be an indication of lack of a good faith effort.

g. The ACO shall maintain documentation of the contractor's efforts to comply with the subcontracting plan. Upon completion of the contract, the ACO shall ensure that a final SF 294 report is submitted and provided to the SADBUS for review and evaluation. Upon review of the final SF 294, the ACO shall, in conjunction with the SADBUS, make a final determination on whether the contractor made a good faith effort. If it is determined that the contractor did not comply in good faith, the ACO shall make appropriate recommendations to the Contracting Officer to assess liquidated damages. In addition, the ACO shall consider the contractor's performance in meeting the subcontracting goal when evaluating the contractor's effectiveness of management on the SF 1420, Performance Evaluation - Construction Contracts, and coordinate this effort with the SADBUS.

4. Dollar amounts to be reported on SF 294 and SF 295 are subcontract award amounts and not disbursements. Should you have any current contracts for which the contractors are reporting disbursements, it is not necessary to change since this would be disruptive to the reporting process. However, it is reiterated that for new contracts, ACOs must ensure that contractors are reporting award amounts, not disbursements.

5. The responsibilities of the ACO in administering the subcontracting plan are defined in FAR Subparts 42.3 and 19.7 and DFARS Subpart 219.3 and are in line with the above described duties. For your information, the Huntsville Division offers a course entitled "Small and Disadvantaged Business Utilization" which is available for contract administrators. I request that you follow the instructions contained in this CB and work very closely with your district SADBUS and the Contracting Officer on issues related to this subject.

6. This CB has been coordinated with the following HQUSACE organizations: Office of Small and Small Disadvantaged Business Utilization (CEDB); Office of the Chief Counsel (CECC-C); Office of the Principal Assistant Responsible for Contracting (CEPR); Operations, Construction and Readiness Division (CECW-O); and the Environmental Restoration Division (CEMP-RS).

*CR Schroer*

CHARLES R. SCHROER  
Chief, Construction Division